

DATE: May 26, 2009

TO: Mayor and City Council

FROM: Director of Finance

SUBJECT: Resolution of Formation to Create Community Facilities District Intended to Finance Police Protection Services in the Cannery Place Area; Calling Special Landowner Election; Declaring Election Results; and Introducing Ordinance to Levy the Special Tax within the Community Facilities District

RECOMMENDATION

That Council holds a public hearing and adopts the attached resolutions related to the formation by land-owner election, of a Community Facilities District for the Cannery Place Area (CFD No. 2) to provide funding for police services.

1. Prior to the public hearing, determine if any property owners or registered voters wish to file a written protest.
2. Open public hearing to inquire into the formation of CFD No. 2 and formation of the future annexation areas (See Boundary map at Attachment A), and levy special taxes for police protection services.
3. Adopt Resolution of Formation of CFD No. 2.
4. Adopt of Resolution Calling Special Landowner Election for CFD No. 2.
5. City Clerk will announce the results of the election, confirming that at least 2/3rds of the property owners voted yes.
6. Adopt of Resolution Declaring Results of Special Landowner Election and Directing Recording of the Notice of Special Tax Lien within CFD No. 2.
7. Introduce (first reading) Ordinance of the City of Hayward Levying Special Tax within CFD No. 2.

BACKGROUND

The City has approved a major development, the Cannery Place Project, in the City's Downtown Redevelopment Area. The Developers, Citation Homes and Weyerhauser Realty Investors (WRI), and the City have been working together to assure the success of this Project. The Project includes the development of approximately 575 residential units, a retail parcel, a new elementary school, and major new parks and open space. The Developers and the City have explored the use of a CFD to assure the delivery of police protection services to the Downtown

Corridor and the Cannery Project in perpetuity. The Burbank Elementary School was opened on August 25, 2008; the Cannery Park has also been open since last Summer. Some residential units are built and currently leased, with the full build out expected to occur by 2015.

CFDs are created by local governments in California under State authorizing legislation known as the Mello-Roos Community Facilities Act of 1982, California Government Code 53311 et. seq. (Act) and may also be created by charter cities by ordinance. The Act provides financing for certain public capital facilities and services eligible under the Act. The City is planning the formation of the Cannery Place Area CFD and future CFDs for other projects within the City.

In October 2008, the Council awarded a professional services contract to CSG Advisors for Financial Advisor services. Since then a Finance Team has been created to add Goodwin Consulting Group as special tax consultant, and Jones Hall as special legal counsel, and senior staff. The Finance Team has been working with the Developers to form CFD No. 2. On April 21, 2009, the Council approved a Resolution of Intention to create a Community Facilities District in the Cannery Place Area and adopted revised Local Goals and Policies for CFD's.

DISCUSSION

Purpose of the Cannery Place CFD – The objective of CFD No. 2 is to create a funding source for police protection services required to meet the demands of this new development. As required under the Act, the police services to be provided are in addition to those currently provided within the CFD No. 2 boundary and will not supplant services already available. The City has determined that the new development will create an additional cost burden to provide police protection services beyond that which is currently available. The Council has received petitions from the land owners of the Cannery Place development requesting that the City proceed with the establishment of a CFD that would specifically fund the eligible costs.

Determination of CFD Boundary and Future Annexation Areas – The CFD No. 2 boundary includes the property owned by Citation Homes and Weyerhaeuser Realty Investors; east of the Southern Pacific Railroad tracks, within the streets of Filbert, Myrtle, Meek, and Winton Avenue, south of the Burbank Elementary School. The Cannery Place area development has approval for approximately 575 residential units and a retail parcel, all of which would be within the CFD boundary.

There are two future annexation areas: 1) the residual (previous) Burbank School site, owned by the Hayward Redevelopment Agency; and 2) the large parcel west of Filbert Street, owned by Libitzky Holdings LP et al (Libitzky). They are not included in the CFD boundary due to the uncertainty as to how these areas will be developed in the future, specifically if there will be below market value units. By including the two properties in the CFD No. 2 future annexation areas, the City will be able to use a streamlined annexation procedure if the properties are going to be included in CFD No. 2 and the City will be able to identify the appropriate special tax for those properties at the time they are developed. The future annexation areas will be annexed to CFD No. 2 only if there is unanimous approval of the owners of each parcel at the time of the annexation.

Proposed Special Tax Rates – Maximum annual tax rate is set at \$484 per residential market-rate unit. Beginning July 1, 2010, and each July 1 thereafter, the tax rate shall be increased by the greater of 4% or the Bay Area CPI. The tax will be levied annually, and collected in the same manner as regular property taxes.

The Rate and Method of Apportionment (RMA) outlines the methodology used to calculate these taxes due for all parcels of taxable properties in the district boundaries, after a Certificate of Occupancy has been issued by the City. Government-owned properties and vacant land are not subject to the tax. The RMA is available in the City Clerk's Office and is attached to the April 21 staff report on the City's website.

FISCAL AND ECONOMIC IMPACT

The City expects to fund additional police protection services from the CFD No. 2 special taxes collected. The special tax is only levied on units with Certificates of Occupancy issued. There are currently 16 units built for which Certificates of Occupancy have been issued, which are expected to generate \$7,744 of special tax revenue in FY 2010. The City has issued a total of 38 building permits to date within the CFD No. 2 boundary, and the planned full build-out according to the associated final maps, includes a total of 575 residential market rate units. The City expects full build-out to occur by 2015. If full build-out is achieved, the City projects the annual special tax revenue will be a minimum of \$278,300. These special tax rates are subject to an annual growth rate based on the greater of the Bay Area CPI or 4%.

PUBLIC CONTACT

The required Notice of Public Hearing has been published in the Daily Review, and all landowners have received notice of the public hearing and special landowner election. As permitted by the Act, the ballots will be mailed to the property owners within the territory of the proposed CFD and must be returned to the City Clerk at or before the Council meeting.

SCHEDULE

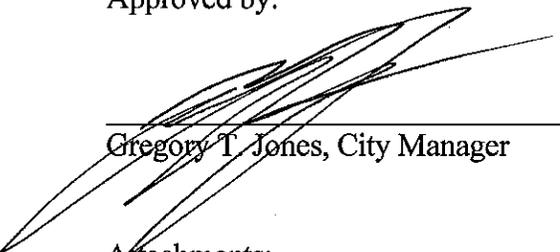
If the Council approves the attached resolutions after the Public Hearing and the election is successful, the CFD will be established. Thereafter, the Council will be asked to hold the second reading of and adopt the Ordinance to Levy Special Tax within CFD No. 2 on June 2, 2009, and the CFD will have legally effective authority to levy special taxes on or about July 2, 2009. The City will prepare the tax levy and submit it to the County by the August due date, in order to place FY 2010 special taxes on the County property tax bill.

Recommended by:



Debra C. Auker, Director of Finance

Approved by:



Gregory T. Jones, City Manager

Attachments:

- A. CFD No. 2 Boundary map
- B. Resolution of Formation
- C. Resolution Calling Special Landowner Election
- D. Resolution Declaring Results of Special Landowner Election and Directing Recording of the Notice of Special Tax Lien within CFD No. 2.
- E. Ordinance of the City of Hayward Levying Special Tax within CFD No. 2.

PROPOSED BOUNDARIES OF
CITY OF HAYWARD
COMMUNITY FACILITIES DISTRICT NO. 2
 (Cannerly Place Public Services)
 Alameda County, State of California

1. Filed in the office of the City Clerk of the City of Hayward this 24th day of April, 2008.

Miriam Lens
 City Clerk
 Miriam Lens
 City of Hayward

2. I hereby certify that the within map showing proposed boundaries of City of Hayward, Community Facilities District No. 2 (Cannerly Place Public Services), County of Alameda, State of California, was approved by the City Council of the City of Hayward, at a meeting thereof, held on the 21st day of APRIL, 2009, by its Resolution No. 09-050

Miriam Lens
 City Clerk
 Miriam Lens
 City of Hayward

3. Filed this 5th day of May, 2008, at the hour of 1:55 o'clock P.m. in Book 17 of Maps of Assessment and Community Facilities Districts at Page 40 in the Office of the County Recorder in the County of Alameda, State of California.
 Roll# 2009142131

Terica Quintero
 County Recorder
 County of Alameda

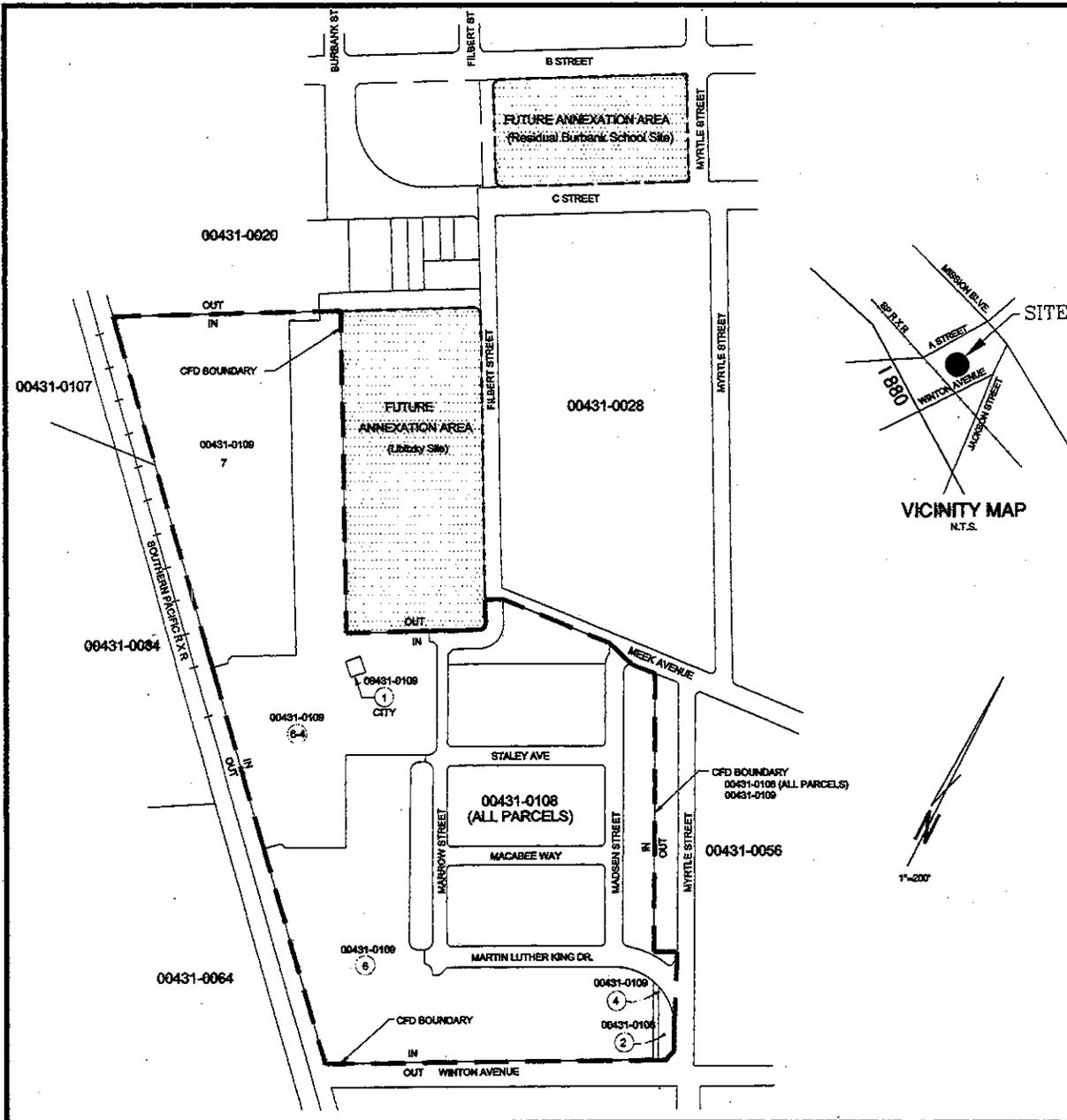


LEGEND

- 00431-0109 ASSESSOR'S BOOK AND PAGE
- (6) ASSESSOR PARCEL NUMBER
- COMMUNITY FACILITIES DISTRICT BOUNDARY

CCG
 Coastal Consulting Group

by
 J.E. Conroy, LLC
 1070 L. Street, Suite 200
 SHEET 1 OF 1



955-9 Proposed Boundaries City of Hayward - District No. 2 Assessment Map Bk 17 pg 40

DRAFT

CITY OF HAYWARD

RESOLUTION NO. _____

me
5/19/09

Introduced by Council Member _____

RESOLUTION OF FORMATION OF COMMUNITY FACILITIES DISTRICT

CITY OF HAYWARD

Community Facilities District No. 2
(Cannery Place Public Services)

WHEREAS, the City Council (the "Council") of the City of Hayward (the "City") adopted a resolution entitled "Resolution of Intention to Establish Community Facilities District" (the "Resolution of Intention"), stating its intention to form (i) "City of Hayward Community Facilities District No. 2 (Cannery Place Public Services)" (the "CFD") and (ii) "City of Hayward Community Facilities District No. 2 (Cannery Place Public Services) (Future Annexation Area)" (the "Future Annexation Area"), pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act");

WHEREAS, the Resolution of Intention, incorporating a map of the proposed boundaries of the CFD and the Future Annexation Area and stating the services to be provided and the rate and method of apportionment of the special tax to be levied within the CFD to pay for the services, is on file with the City Clerk and the provisions thereof are incorporated herein by this reference as if fully set forth herein;

WHEREAS, on this date, this Council held a noticed public hearing as required by the Act and the Resolution of Intention relative to the proposed formation of the CFD and the Future Annexation Area;

WHEREAS, at the hearing all interested persons desiring to be heard on all matters pertaining to the formation of the CFD and the Future Annexation Area, the services to be provided therein and the levy of such special tax were heard and a full and fair hearing was held;

WHEREAS, at the hearing evidence was presented to this Council on such matters before it, including a special report (the "Report") as to the services to be provided through the CFD and the costs thereof, a copy of which is on file with the City Clerk, and this Council at the conclusion of said hearing is fully advised in the premises;

WHEREAS, written protests with respect to the formation of the CFD, the furnishing of specified types of services and the rate and method of apportionment of the special taxes have not been filed with the City Clerk by 50% or more of the registered voters residing within the territory of the CFD or property owners of one-half or more of the area of land within the CFD and not exempt from the proposed special taxes;

WHEREAS, written protests have not been filed with the City Clerk against the proposed annexation of the Future Annexation Area to the CFD by (i) 50% of more of the registered voters, or six registered voters, whichever is more, residing in the proposed boundaries of the CFD, or (ii) 50% or more of the registered voters, or six registered voters, whichever is more, residing in the Future Annexation Area, (iii) owners of one-half or more of the area of land in the proposed CFD or (iv) owners of one-half or more of the area of land in the Future Annexation Area.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward as follows:

1. Recitals Correct. The foregoing recitals are true and correct.
2. No Majority Protest. The proposed CFD, the proposed Future Annexation Area and the proposed special tax to be levied within the CFD have not been precluded by majority protest pursuant to section 53324 of the Act.
3. Prior Proceedings Valid. All prior proceedings taken by this City Council in connection with the establishment of the CFD and the Future Annexation Area and the levy of the special tax have been duly considered and are hereby found and determined to be valid and in conformity with the Act.
4. Name of CFD and Future Annexation Area. The community facilities district designated "City of Hayward Community Facilities District No. 2 (Cannery Place Public Services)" and the future annexation area designated "City of Hayward Community Facilities District No. 2 (Cannery Place Public Services) (Future Annexation Area)" are hereby established pursuant to the Act.
5. Boundaries of CFD. The boundaries of the CFD and the Future Annexation Area, as set forth in the map of the CFD and the Future Annexation Area recorded in the Alameda County Recorder's Office on _____, at ____:__15 __m., in the Book of Maps of Assessment and Community Facilities Districts as Document No. _____, are hereby approved, are incorporated herein by reference and shall be the boundaries of the CFD and the Future Annexation Area.

Parcels within the Future Annexation Area shall be annexed to the CFD only with the unanimous approval (each, a "Unanimous Approval") of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, without any requirement for further public hearings or additional proceedings.

6. Description of Services. The type of public services proposed to be financed by the CFD and pursuant to the Act shall consist of those items shown in Exhibit A hereto and by this reference incorporated herein (the "Services"). The City intends to provide the Services on

an equal basis in the original territory of the CFD and, when it has been annexed to the CFD, the Future Annexation Area.

7. Special Tax.

a. Except to the extent that funds are otherwise available to the CFD to pay for the Services, a special tax (the "Special Tax") sufficient to pay the costs thereof, secured by the recordation of a continuing lien against all non-exempt real property in the CFD, is intended to be levied annually within the CFD, and collected in the same manner as ordinary ad valorem property taxes or in such other manner as may be prescribed by this Council.

b. The proposed rate and method of apportionment of the Special Tax among the parcels of real property within the CFD, in sufficient detail to allow each landowner within the proposed CFD to estimate the maximum amount such owner will have to pay, are shown in Exhibit B attached hereto and hereby incorporated herein.

c. Territory in the Future Annexation Area will be annexed into the CFD and a special tax will be levied on such territory only with the Unanimous Approval of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed into the CFD. Except to the extent that funds are otherwise available to the CFD to pay for the Services, a special tax sufficient to pay the costs thereof, secured by the recordation of a continuing lien against all non-exempt real property in the Future Annexation Area, is intended to be levied annually within the Future Annexation Area, and collected in the same manner as ordinary ad valorem property taxes or in such other manner as may be prescribed by this City Council. As required by Section 53339.3(d) of the Act, the Council hereby determines that the special tax proposed to pay for Services to be supplied within the Future Annexation Area shall be equal to any special tax levied to pay for the same Services in the existing CFD, except that a higher or lower tax may be levied within the Future Annexation Area to the extent that the actual cost of providing the Services in the Future Annexation Area is higher or lower than the cost of providing those Services in the existing CFD. In so finding, the Council does not intend to limit its ability to levy a special tax within the Future Annexation Area to provide new or additional services beyond those supplied within the existing CFD.

8. Increased Demands. It is hereby found and determined that the Services are necessary to meet increased demands placed upon local agencies, including the City, as the result of development occurring in the CFD and the Future Annexation Area. The Services are in addition to those provided in the territory of the CFD and the Future Annexation Area as of the date hereof and will not supplant services already available within the territory of the bCFD and the Future Annexation Area as of the date hereof.

9. Responsible Official. The City Manager of the City of Hayward, City Hall, 777 B Street, Hayward, CA 94541, telephone number (510) 583-4000, is the officer of the City who will be responsible for preparing annually a current roll of the levy of the Special Tax obligations

by assessor's parcel number and who will be responsible for estimating future levies of the Special Tax.

10. Tax Lien. Upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the California Streets and Highways Code, a continuing lien to secure each levy of the Special Tax shall attach to all nonexempt real property in the CFD and this lien shall continue in force and effect until the Special Tax obligation is prepaid and permanently satisfied and the lien canceled in accordance with law or until collection of the Special Tax by the City ceases.

11. Appropriations Limit. In accordance with the Act, the annual appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of the CFD is hereby preliminarily established at \$ _____ and such appropriations limit shall be submitted to the voters of the CFD as hereafter provided. The proposition establishing such annual appropriations limit shall become effective if approved by the qualified electors voting thereon and shall be adjusted in accordance with the applicable provisions of the Act and the Constitution.

12. Election. Pursuant to the provisions of the Act, the proposition of the levy of the Special Tax and the proposition of the establishment of the appropriations limit specified above shall be submitted to the qualified electors of the CFD at an election the time, place and conditions of which election shall be as specified by a separate resolution of this Council.

13. Effective Date. This resolution shall take effect upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA, _____ 2009

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Exhibit A
Page 5
EXHIBIT A

CITY OF HAYWARD
Community Facilities District No. 2
(Cannery Place Public Services)

DESCRIPTION OF SERVICES

The captioned Community Facilities District will finance, in whole or in part, the following services ("services" shall have the meaning given that term in the Mello-Roos Community Facilities Act of 1982), including all related administrative costs, expenses and related reserves for replacement of vehicles, equipment and facilities:

- Police protection services.

EXHIBIT B

CITY OF HAYWARD COMMUNITY FACILITIES DISTRICT NO. 2 (CANNERY PLACE PUBLIC SERVICES)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

Special Taxes applicable to each Assessor's Parcel in Community Facilities District No. 2 (Cannery Place Public Services) [herein "CFD No. 2" or "CFD"] shall be levied and collected according to the tax liability determined by the City Council of the City of Hayward, acting in its capacity as the legislative body of CFD No. 2, through the application of the appropriate Special Taxes, as described below. All of the property in CFD No. 2, unless exempted by law or by the provisions of Section E below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2, unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5 (commencing with Section 53311), Division 2, of Title 5 of the Government Code of the State of California.

"Administrative Expenses" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 2: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or any designee thereof or both); the costs of collecting the Special Taxes (whether by the City or otherwise); the costs to the City, CFD No. 2, or any designee thereof of complying with City, CFD No. 2, or obligated persons disclosure requirements associated with the Act; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City, CFD No. 2, or any designee thereof related to an appeal of the Special Tax; and the City's annual administration fees and third party expenses. Administrative Expenses shall also include amounts estimated or advanced by the City or CFD No. 2 for any other administrative purposes of CFD No. 2, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

"Administrator" means an official of the City, or any designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes.

“Assessor’s Parcel” or **“Parcel”** means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel Number.

“Assessor’s Parcel Map” means an official map of the County Assessor designating parcels by Assessor’s Parcel Number.

“Assessor’s Parcel Number” or **“APN”** means a unique number assigned to an Assessor’s Parcel by the County Assessor for purposes of identifying a property.

“Authorized Services” means the public services authorized to be funded by the CFD as set forth in the documents adopted by the Council when the CFD was formed.

“Below Market-Rate Unit” means a Dwelling Unit within CFD No. 2 that has a deed restriction recorded on title of the property that: (i) limits the rental price or sales price of the Dwelling Unit; (ii) limits the appreciation that can be realized by the owner of such Dwelling Unit; or (iii) in any other way restricts the current or future rental rate or value of the Dwelling Unit.

“City” means the City of Hayward.

“Council” means the City Council of the City, acting as the legislative body of CFD No. 2.

“County” means the County of Alameda.

“CPI” means, for each Fiscal Year, the Consumer Price Index published by the U.S. Bureau of Labor Statistics for All Urban Consumers in the San Francisco – Oakland – San Jose Area, measured as of the month of December in the calendar year that ends in the previous Fiscal Year. In the event this index ceases to be published, the CPI shall be another index as determined by the Administrator that is reasonably comparable to the Consumer Price Index for the San Francisco – Oakland – San Jose Area.

“Dwelling Unit” means a building or portion thereof designed for and occupied in whole or in part as a residence or sleeping place, either permanently or temporarily, by one family and its guests, with sanitary facilities and one kitchen provided within the unit. Boarding or lodging houses, dormitories, and hotels shall not be defined as Dwelling Units unless the land use permit specifies a residential use.

“Fiscal Year” means the period starting on July 1 and ending on the following June 30.

“Future Annexation Area” means the area designated for future annexation to CFD No. 2 as shown in the proposed CFD No. 2 boundary map in Exhibit A of this RMA.

“Market-Rate Unit” means a Dwelling Unit within CFD No. 2 that is not a Below Market-Rate Unit.

“Maximum Special Tax” means the maximum Special Tax, determined in accordance with Section C, that can be levied in any Fiscal Year.

“Proportionately” means that the ratio of the actual annual Special Tax levy to the Maximum Special Tax is equal for all Assessors’ Parcels of Residential Property.

“Public Property” means, for each Fiscal Year: (a) any property within the boundaries of CFD No. 2 that is owned by or irrevocably offered for dedication to the federal government, the State, the City or any other public agency; provided, however, that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act, as such section may be amended or replaced, shall be taxed and classified in accordance with its use; or (b) any property within the boundaries of CFD No. 2 that is encumbered by an unmanned utility easement making impractical its utilization for other than the purpose set forth in the easement.

“Residential Property” means, for each Fiscal Year, all Assessor’s Parcels for which a certificate of occupancy was issued by the City on or prior to June 1 of the preceding fiscal year for a residential Dwelling Unit.

“RMA” means this Rate and Method of Apportionment of Special Tax.

“Special Tax” means a special tax levied pursuant to the Act in any Fiscal Year to pay the Special Tax Requirement.

“Special Tax Requirement” means the amount of revenue needed in any Fiscal Year to pay for the following: (i) Authorized Services; (ii) Administrative Expenses; and (iii) amounts needed to cure any delinquencies in the payment of Special Taxes which have occurred or, based on delinquency rates in prior years, may be expected to occur in the Fiscal Year in which the Special Tax will be collected.

“Taxable Property” means all Residential Property within the boundaries of CFD No. 2.

B. DATA COLLECTION FOR ANNUAL TAX LEVY

Each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel Numbers for all Parcels of Taxable Property within CFD No. 2. The Administrator shall also determine: (i) whether each Assessor’s Parcel of Residential Property contains Market-Rate Units and/or Below Market-Rate Units; and (ii) the number of Dwelling Units on each Parcel of Residential Property.

In any Fiscal Year, if it is determined that (i) a final map or parcel map for a portion of property in CFD No. 2 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the final map or parcel map was recorded, the Assessor does not yet recognize the new parcels created by the final map or parcel map, and (iii) one or more of the newly-created parcels meets the definition of Residential Property, the Administrator shall

calculate the Special Tax for the property affected by recordation of the final map or parcel map by determining the Special Tax that applies separately to each newly-created parcel, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the final map or parcel map.

C. MAXIMUM SPECIAL TAXES

1. Initial Boundary of CFD No. 2

a. Maximum Special Tax

The Maximum Special Tax for Fiscal Year 2009-10 for all Parcels of Taxable Property with Market-Rate Units shall be \$484 per Dwelling Unit.

b. Maximum Special Tax Increases

On July 1, 2010, and each July 1 thereafter, the Maximum Special Tax shall be increased by a percentage equal to the greater of: (i) the increase, if any, in the prior calendar year's change in the CPI; or (ii) 4.0%.

2. Future Annexation Area

a. Maximum Special Tax

A separate Maximum Special Tax per Market-Rate Unit and/or per Below Market-Rate Unit may be identified for Parcels of Taxable Property with such Dwelling Units within the Future Annexation Area at the time such area is annexed to CFD No. 2.

b. Maximum Special Tax Increases

On July 1, 2010, and each July 1 thereafter, the Maximum Special Tax shall be increased by a percentage to be identified at the time Parcels within the Future Annexation Area are annexed to CFD No. 2.

D. METHOD OF LEVY AND COLLECTION OF SPECIAL TAXES

Each Fiscal Year, the Special Tax shall be levied Proportionately on each Parcel of Taxable Property in the CFD up to 100% of the Maximum Special Tax determined pursuant to Section C above until the total amount levied is equal to the Special Tax Requirement for the Fiscal Year.

The Special Tax for the CFD shall be collected at the same time and in the same manner as ordinary ad valorem property taxes provided, however, that the City may (under the authority of Government Code Section 53340) collect Special Taxes at a different time or in a different

manner if necessary to meet the financial obligations of CFD No. 2, and the Special Tax shall be equally subject to foreclosure if delinquent.

E. EXEMPTIONS

Notwithstanding any other provision of this RMA, no Special Tax shall be levied on Parcels within the CFD that are not Taxable Property. Furthermore, no Special Tax shall be levied on Public Property, except as otherwise provided in the Act.

F. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make minor administrative and technical changes to this document that do not materially affect the rate and method of apportioning Special Taxes or the definition of Taxable Property. In addition, the interpretation and application of any section of this document shall be left to the City's discretion. Interpretations may be made by the City by resolution of the Council for purposes of clarifying any vagueness or ambiguity in this RMA.

G. APPEAL OF SPECIAL TAX LEVY

Any property owner claiming that the amount or application of the Special Tax is not correct may file a written notice of appeal with the Administrator not later than one calendar year after having paid the Special Tax that is disputed. The Administrator shall promptly review the appeal, and if necessary, meet with the property owner, consider written and oral evidence regarding the amount of the Special Tax, and decide the appeal. If the property owner disagrees with the Administrator's decision relative to the appeal, the owner may then file a written appeal with the Council whose subsequent decision shall be binding. If the decision of the Administrator (if the appeal is not filed with the Council) or the Council (if the appeal is filed with the Council) requires the Special Tax to be modified or changed in favor of the property owner, no cash refund shall be made for prior years' Special Tax levies, but an adjustment shall be made to the next Special Tax levy(ies). This procedure shall be exclusive and its exhaustion by any property owner shall be a condition precedent to any legal action by such owner.

H. TERM OF SPECIAL TAX

The Special Tax shall be levied in perpetuity as necessary to pay the Special Tax Requirement.

DRAFT

CITY OF HAYWARD

RESOLUTION NO. _____

me
5/13/09

Introduced by Council Member _____

RESOLUTION CALLING SPECIAL LANDOWNER ELECTION FOR COMMUNITY FACILITIES DISTRICT

CITY OF HAYWARD

Community Facilities District No. 2
(Cannery Place Public Services)

WHEREAS, the City Council (the "Council") of the City of Hayward (the "City") has adopted a resolution entitled "Resolution of Formation of Community Facilities District" (the "Resolution of Formation"), ordering the formation of the "City of Hayward Community Facilities District No. 2 (Cannery Place Public Services)" (the "CFD") and a future annexation area (the "Future Annexation Area"), defining the public services (the "Services") to be provided by the CFD, authorizing the levy of a special tax on property within the CFD and preliminarily establishing an appropriations limit for the CFD, all pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act"); and

WHEREAS, pursuant to the provisions of the Resolution of Formation, the propositions of the levy of the special tax and the establishment of the appropriations limit shall be submitted to the qualified electors of the CFD as required by the provisions of the Act.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward as follows:

1. Issues Submitted. Pursuant to the Act, the issues of the levy of the special tax and the establishment of the appropriations limit shall be submitted to the qualified electors (as defined below) of the CFD at an election called therefor as provided below.
2. Qualified Electors. This Council hereby finds that fewer than 12 persons have been registered to vote within the territory of the CFD for each of the ninety (90) days preceding the close of the public hearings heretofore conducted and concluded by this Council for the purposes of these proceedings. Accordingly, and pursuant to Section 53326 of the Act, this Council finds that, for these proceedings, the qualified electors are the landowners within the CFD and that the vote shall be by such landowners or their authorized representatives, each having one vote for each acre or portion thereof such landowner owns in the CFD as of the close of the public hearing.
3. Conduct of Election. This Council hereby calls a special election to consider the

issues described in Section 2, above, which election shall be held on May 26, 2009, and the results thereof canvassed at the meeting of this Council on May 26, 2009. The City Clerk is hereby designated as the official to conduct the election and to receive all ballots until the close of business on the election date. It is hereby acknowledged that the Clerk has on file the Resolution of Formation, a map of the boundaries of the CFD, and a sufficient description to allow the Clerk to determine the electors of the CFD. Pursuant to Section 53327 of the Act, the election shall be conducted by messenger or mail-delivered ballot pursuant to Section 4000 of the California Elections Code. This Council hereby finds that paragraphs (a), (b), (c) (1) and (c)(3) of Section 4000 are applicable to this special election, except that Sections 53326 and 53327 of the Act shall govern for purposes of determining the date of the election.

4. **Ballot.** As authorized by Section 53353.5 of the Act, the issues described in section 1 above shall be combined into a single ballot measure, the form of which as attached hereto as Exhibit "A" is hereby approved. The City Clerk is hereby authorized and directed to cause a ballot, in substantially the form of Exhibit "A," to be delivered to each of the qualified electors of the CFD. Each ballot shall indicate the number of votes to be voted by the respective landowner to which the ballot pertains. Each ballot shall be accompanied by all supplies and written instructions necessary for the use and return of the ballot. The envelope to be used to return the ballot shall be enclosed with the ballot, have the return postage prepaid, and contain the following: (a) the name and address of the landowner, (b) a declaration, under penalty of perjury, stating that the voter is the owner of record or authorized representative of the landowner entitled to vote and is the person whose name appears on the envelope, (c) the printed name, signature and address of the voter, (d) the date of signing and place of execution of the declaration pursuant to clause (b) above, and (e) a notice that the envelope contains an official ballot.

5. **Waivers.** This Council hereby further finds that the provisions of Section 53326 of the Act requiring a minimum of 90 days following the adoption of the Resolution of Formation to elapse before the special election are for the protection of the qualified electors of the CFD. There is on file with the Clerk a written waiver executed by all of the qualified electors of the CFD allowing for a shortening of the time for the special election to expedite the process of formation of the CFD and waiving any requirement for notice, analysis and arguments in connection with the election. Accordingly, this Council finds and determines that the qualified electors have been fully apprised of and have agreed to the shortened time for the election and waiver of analysis and arguments, and have thereby been fully protected in these proceedings. This Council also finds and determines that the City Clerk has concurred in the shortened time for the election. Analysis and arguments with respect to the ballot measures are hereby waived, as provided in Section 53327 of the Act.

6. **Accountability.** Under Section 50075.1 of the Government Code, the following accountability provisions shall apply to the special taxes: (a) the construction and/or acquisition of the Services and the incidental costs thereof including any bonds, all as defined in the Resolution of Formation, shall constitute the specific single purpose; (b) the proceeds shall be applied only to the specific purposes identified in (a) above; (c) there shall be created special account(s) or funds(s) into which the proceeds shall be deposited; and (d) there shall be caused to

be prepared an annual report if required by Section 50075.3 of the Government Code.

7. Effective Date. This Resolution shall take effect upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA, _____, 2009.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

EXHIBIT A

**CITY OF HAYWARD
Community Facilities District No. 2
(Cannery Place Public Services)**

**OFFICIAL BALLOT
SPECIAL TAX ELECTION**

This ballot is for a special, landowner election. You must return this ballot in the enclosed postage paid envelope to the office of the City Clerk of the City of Hayward no later than the hour of 8:00 p.m. on Tuesday, May 26, 2009, either by mail or in person. The City Clerk's office is located at 777 B Street, Hayward, California 94541.

To vote, mark a cross (X) on the voting line after the word "YES" or after the word "NO". All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void.

If you wrongly mark, tear, or deface this ballot, return it to the City Clerk of the City of Hayward and obtain another.

BALLOT MEASURE: Shall the City of Hayward be authorized to annually levy a special tax solely on lands within the City of Hayward Community Facilities District No. 2 (Cannery Place Public Services) (the "CFD") in accordance with the rate and method contained in the Resolution of Formation of the CFD adopted by the City Council of the City on May 26, 2009, commencing in the City's fiscal year 2009-10, to pay for the public services specified in the Resolution of Formation for the CFD and to pay the costs of the City in administering the CFD, and shall the annual appropriations limit of the CFD be established in the amount of \$ _____?

YES: _____

NO: _____

By execution in the space provided below, you also confirm your written waiver of the time limit pertaining to the conduct of the election and any requirement for analysis and arguments with respect to the ballot measure.

Number of Votes: ____

Property Owner:

[Property Owner]

Authorized Representative

DRAFT

CITY OF HAYWARD

Resolution No. _____

Introduced by Council Member _____

mal
5/13/09

RESOLUTION DECLARING RESULTS OF SPECIAL LANDOWNER ELECTION AND DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN

CITY OF HAYWARD

Community Facilities District No. 2
(Cannery Place Public Services)

WHEREAS, the City Council (the "Council") of the City of Hayward (the "City") has adopted a resolution entitled "Resolution of Formation of Community Facilities District" (the "Resolution of Formation"), ordering the formation of the "City of Hayward Community Facilities District No. 2 (Cannery Place Public Services)" (the "CFD") and a future annexation area, authorizing the levy of a special tax on property within the CFD and preliminarily establishing an appropriations limit for the CFD, all pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act").

WHEREAS, under the provisions of the Resolution of Formation and pursuant to a resolution entitled "Resolution Calling Special Landowner Election for Community Facilities District" (the "Election Resolution") heretofore adopted by this Council, the propositions of the levy of the special tax and the establishment of the appropriations limit were submitted to the qualified electors of the CFD as required by the provisions of the Act.

WHEREAS, pursuant to the terms of the Election Resolution, which are by this reference incorporated herein, the special election has been held and the City Clerk has on file a Canvass and Statement of Results of Election, (the "Canvass") a copy of which is attached hereto as Exhibit A; and

WHEREAS, this Council has been informed of the Canvass, finds it appropriate and wishes to complete its proceedings for the CFD.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward as follows:

1. Recitals. The foregoing recitals are all true and correct.
2. Issues Presented. The issues presented at the special election were the levy of a special tax within the CFD and the approval of an annual appropriations limit of not to exceed \$ _____, all pursuant to the Resolution of Formation.

3. Canvass and Issues Approved. The Council hereby approves the Canvass and finds that it shall be a permanent part of the record of its proceedings for the CFD. Pursuant to the Canvass, the issues presented at the special election were approved by the qualified electors of the CFD by more than two-thirds of the votes cast at the special election.

4. Proceedings Approved. Pursuant to the voter approval, the CFD is hereby declared to be fully formed with the authority to levy the special taxes and to have the established appropriations limit, all as heretofore provided in these proceedings and in the Act. It is hereby found that all prior proceedings and actions taken by this Council with respect to the CFD were valid and in conformity with the Act.

5. Notice of Tax Lien. The City Clerk is hereby directed to complete, execute and cause to be recorded in the office of the County Recorder of the County of Alameda a notice of special tax lien in the form required by the Act, such recording to occur no later than fifteen (15) days following adoption of this resolution by the Council.

6. Effective Date. This Resolution shall take effect upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA, _____, 2009.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

EXHIBIT A

CANVASS AND STATEMENT OF RESULT OF ELECTION

**CITY OF HAYWARD
Community Facilities District No. 2
(Cannery Place Public Services)**

I hereby certify that on May 26, 2009, I canvassed the returns of the election held on May 26, 2009, in the City of Hayward Community Facilities District No. 2 (Cannery Place Public Services) and the total number of ballots cast in such District and the total number of votes cast for and against the measure are as follows and the totals as shown for and against the measure are full, true and correct:

Qualified Landowner	Votes		
<u>Votes</u> <u>Cast</u>	<u>YES</u>	<u>NO</u>	
City of Hayward Community Facilities District No. 2 (Cannery Place Public Services) Special Tax Election, May 26, 2009.	46	_____	_____

BALLOT MEASURE: Shall the City of Hayward be authorized to annually levy a special tax solely on lands within the City of Hayward Community Facilities District No. 2 (Cannery Place Public Services) (the "CFD") in accordance with the rate and method contained in the Resolution of Formation of the CFD adopted by the City Council of the City on May 26, 2009, commencing in the City's fiscal year 2009-10, to pay for the public services specified in the Resolution of Formation for the CFD and to pay the costs of the City in administering the CFD, and shall the annual appropriations limit of the CFD be established in the amount of \$ _____?

YES: _____

No: _____

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND on May 26, 2009.

By: _____
City Clerk City of Hayward

DRAFT

CITY OF HAYWARD

ORDINANCE NO. _____

Introduced by Council Member _____

*YML
5/13/09*ORDINANCE OF THE CITY OF HAYWARD LEVYING
SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICTCITY OF HAYWARD
Community Facilities District No. 2
(Cannery Place Public Services)

WHEREAS, on April 21, 2009, the City Council (the "Council") of the City of Hayward (the "City") adopted a resolution entitled "Resolution of Intention to Establish Community Facilities District" (the "Resolution of Intention"), and has conducted proceedings (the "Proceedings") to establish "City of Hayward Community Facilities District No. 2 (Cannery Place Public Services)" (the "CFD") and a future annexation area (the "Future Annexation Area") pursuant to the Mello-Roos Community Facilities Act, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act") to finance certain public services (the "Services) as provided in the Act;

WHEREAS, pursuant to notice as specified in the Act, and as part of the Proceedings, the Council has held a public hearing under the Act relative to the determination to proceed with the formation of the CFD and the Future Annexation Area and the rate and method of apportionment of the special tax ("Special Tax") to be levied within the CFD to finance the Services, and at such hearing all persons desiring to be heard on all matters pertaining to the formation of the CFD and the Future Annexation Area and the levy of the Special Tax were heard, substantial evidence was presented and considered by this Council and a full and fair hearing was held;

WHEREAS, upon the conclusion of the hearing, this Council adopted its "Resolution of Formation of Community Facilities District" (the "Resolution of Formation), pursuant to which it completed the Proceedings for the establishment of the CFD and the Future Annexation Area, the authorization of the levy of the Special Tax within the CFD and the calling of an election within the CFD on the propositions of levying the Special Tax and establishing an appropriations limit within the CFD, respectively; and

WHEREAS, on May 26, 2009, a special election was held among the landowner voters within the CFD at which such voters approved such propositions by the two-thirds vote required by the Act, which approval has been confirmed by resolution of this Council.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HAYWARD as follows:

Section 1. By the passage of this Ordinance, the Council hereby authorizes and levies the Special Tax within the CFD pursuant to the Act, at the rate and in accordance with the rate and method of apportionment of Special Tax set forth in the Resolution of Formation which rate and method is by this reference incorporated herein. The Special Tax is hereby levied commencing in fiscal year 2009-10, and in each fiscal year thereafter to pay for the Services for the CFD, as contemplated by the Resolution of Formation and the Proceedings and all costs of administering the CFD.

Section 2. The City Manager or designee, or an employee or consultant of the City, is hereby authorized and directed each fiscal year to determine the specific Special Tax to be levied for the next ensuing fiscal year for each parcel of real property within the CFD, in the manner and as provided in the Resolution of Formation.

Section 3. Exemptions from the levy of the Special Tax shall be as provided in the Resolution of Formation and the applicable provisions of the Act. In no event shall the Special Tax be levied on any parcel within the CFD in excess of the maximum Special Tax specified in the Resolution of Formation.

Section 4. All of the collections of the Special Tax shall be used as provided in the Act and in the Resolution of Formation, including, but not limited to, the payment of costs of the Services, the payment of the costs of the City in administering the CFD, and the costs of collecting and administering the Special Tax.

Section 5. The Special Tax shall be collected in the same manner as ordinary ad valorem taxes are collected and shall have the same lien priority, and be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for ad valorem taxes; provided, however, that the Council may provide for other appropriate methods of collection by resolution(s) of the Council. In addition, the provisions of Section 53356.1 of the Act shall apply to delinquent Special Tax payments. The City Manager (or his designee) is hereby authorized and directed to provide all necessary information to the auditor/tax collector of the County of Alameda in order to effect proper billing and collection of the Special Tax, so that the Special Tax shall be included on the secured property tax roll of the County of Alameda for fiscal year 2009-10 and for each fiscal year thereafter until no longer required to pay for the Services or until otherwise terminated by the City.

Section 6. If for any reason any portion of this ordinance is found to be invalid, or if the Special Tax is found inapplicable to any particular parcel within the CFD, by a court of competent jurisdiction, the balance of this ordinance and the application of the Special Tax to the remaining parcels within the CFD shall not be affected.

Section 7. The Mayor shall sign this Ordinance and the City Clerk shall cause the same to be published immediately after its passage at least once in a newspaper of general circulation circulated in the City.

Section 8. This Ordinance shall take effect 30 days from the date of final passage.

IN COUNCIL INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ____ day of _____, 2009, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the ____ day of _____, 2009, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ATTEST: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward